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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

)	
Andrew Paul Leonard,)	
dba APL Microscopic)	
)	
)	
Plaintiff,)	COMPLAINT
)	
vs.)	
)	Civil No.: 2:11-cv-00892-DN
IHC Health Services Inc. and,)	Magistrate: Judge David Nuffer
Allocure Inc.)	
)	
Defendants.)	

The Plaintiff, Andrew Paul Leonard, dba APL Microscopic complains and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for copyright infringement under 17 U.S.C. § 101.
2. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and pursuant to 28 U.S.C. § 1338(a).

3. Venue is proper in this District under 28 U.S.C. § 1391(a) and (c), because the Defendants have transacted business within the state of Utah and a substantial part of the events giving rise to the claims against the Defendant occurred in this judicial district. Additionally, venue is proper under 28 U.S.C. §1400(a), because Defendants have as a principal place of business, and may be found, in the District.

THE PARTIES

4. Plaintiff Andrew Paul Leonard, (hereinafter, Mr. Leonard) is an individual doing business as APL Microscopic at 379 West Street, Suite 4A, New York, NY 10014.

5. Defendants Intermountain Healthcare, IHC Health Services, Inc. (hereinafter, Intermountain) and AlloCure Inc. (hereinafter AlloCure),(parties combined hereinafter as, Defendants). Intermountain is a Utah Corporation, with corporate offices at 36 South State Street, Salt Lake City, UT 84111. AlloCure, having offices at 615 Arapeen Dr. STE 300, Salt Lake City, UT 84108.

GENERAL ALLEGATIONS

6. Mr. Leonard is the creator and seller of microscopic fine art and scientific photographic images, doing business as APL Microscopic. Mr. Leonard creates photographs using an electron microscope, or optical microscope, and digital media. His photographs are unique and highly desirable, particularly to medical,

pharmaceutical, and medical research industries. Mr. Leonard invests a great deal of time and money in creating and licensing his photographs. His photographs are original and creative works. Sales of the photographs are conducted by direct contact with Mr. Leonard and through online brokers.

7. Mr. Leonard is the author and owner of a photograph "Scanning Electron Microscopy of Human Bone Marrow Stem Cells". The photograph is protected by copyright and registered with the U.S. Copyright Office and holds the registration number VA 1-426-177, issued December 20, 2007 (hereinafter, photograph '177). A copy of the copyright registration is attached as Exhibit "A". Registration 1-426-177 is for a published work.

8. On or Before September 26, 2008, Defendants posted a press release on the website for Intermountain, "First-ever Stem Cell Trial to Repair Kidney Damage", <http://intermountainhealthcare.org/about/news/Pages/home.aspx?NewsID=56>, website prominently displaying a copy of photograph '177. A copy of the principal website as shown on July 16, 2009 is attached as Exhibit "B".

9. Upon information and belief, Defendant Intermountain made and distributed additional copies of the press release.

10. Upon information and belief, the photograph '177 was offered through the online broker Science Photo Library, having a website at www.sciencephoto.com on a "rights managed" basis, under which a lower resolution "preview" copy of an image

may be viewed for consideration and a higher resolution copy may be ordered and downloaded upon purchase of a license to use the image. The photograph '177 has never been available for use without charge from the Science Photo Library.

11. Upon information and belief, Defendants downloaded a lower resolution preview copy of the photograph '177 from Science Photo Library website, and incorporated it into the press release.

12. Defendants did not obtain a license for use of photograph '177 and failed to give proper attribution or notice of the true ownership rights in the copyrighted work.

13. As result of the Defendant's actions, Mr. Leonard's copyright to photograph '177 has been infringed, for which Mr. Leonard is entitled to damages.

CLAIM FOR RELIEF

(Copyright Infringement Under 17 U.S.C. § 101, et seq.)

14. The Plaintiff incorporates the allegations of paragraphs 1 through 13 of this complaint as if fully alleged herein.

15. The Defendant knew or should have known that photograph '177 was protected by copyright and, that when procured, with willful disregard for Mr. Leonard's rights, from a broker's website; image '177 was subject to licensing and associated fees.

16. The foreseeable result of the Defendant's wrongful conduct has been to deprive the Plaintiff, Mr. Leonard, of the enjoyment of his exclusive rights in and to the copyrighted work.

17. The Defendant has willfully infringed and has wrongfully profited from the unlicensed use of image '177.

18. Plaintiff, Mr. Leonard, is further entitled to recover damages from the Defendants for the Plaintiff's actual damages and any additional profits of the Defendants under 17 U.S.C. § 504 (a)(1) or, in the alternative, is entitled to an award of statutory damages under 17 U.S.C. § 504(a)(2).

19. Plaintiff, Mr. Leonard, is entitled to enhanced damages under 17 U.S.C. § 504(c)(2) for willful infringement.

20. Plaintiff, Mr. Leonard, is further entitled to recover the costs of bringing this action and attorney's fees under 17 U.S.C. § 505.

21. Plaintiff, Mr. Leonard, is entitled to such other and further relief as is deemed to be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED this 23th day of September, 2011.

/s/J. Todd Rushton

J. Todd Rushton
Rushton IP PLLC

Attorney for Plaintiff

Plaintiff's Address:
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